

WHEN RECORDED, RETURN TO:

City of Tempe Basket

DEVELOPMENT AGREEMENT

[c2014-XXX]

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made as of the _____ day of _____, 2014 (the “**Effective Date**”), among the CITY OF TEMPE, an Arizona municipal corporation (“**City**”), and Papago Park Center, Inc., an Arizona corporation (“**Developer**”).

RECITALS

A. Developer leases the real property within the City of Tempe described in **Exhibit 1.8** (the “**Property**”) on which it intends to construct or cause to be constructed a mixed-use office, multi-family, retail, and hotel project, more fully defined in **Section 1.7** below (the “**Project**”). The Parties acknowledge that the Project is consistent with the City’s General Plan.

B. Within the Property is located a portion of the Grand Canal, which is owned by the United States, and operated and maintained by the Salt River Project Agricultural Improvement District, an agricultural improvement district organized and existing under the laws of the State of Arizona (“**SRP**”), pursuant to contracts with the United States.

C. SRP has agreed to relocate the portion of the Grand Canal, located within the Property (the “**Relocation**”), and license the use areas adjoining that portion of the Grand Canal to City for use by the public as multi-use paths (the “**Multi-Use Path Licensed Areas**”). After the Relocation, SRP and City intend to execute a license authorizing City’s use of the Multi-Use Path Licensed Areas for public recreational use (the “**SRP License**”).

D. The Property is located within the Hayden-Butte Redevelopment Area established by City pursuant to Resolution No. 1163, as amended and modified. City desires to develop the Multi-Use Path Licensed Areas with the core amenities for public use that the City has previously constructed, installed, and maintains in canal multi-use paths that City licenses from SRP (the “**Core Amenities**”), for the purpose of making the Multi-Use Path License Areas available for recreational use. Developer has agreed to construct and install the Core Amenities as part of the Project, and to also include additional enhanced amenities for use by the public (the “**Enhanced Amenities**,” and together with the Core Amenities, the “**Public Amenities**”).

E. In exchange for Developer including the Core Amenities as part of the Project, and for installing the Enhanced Amenities for use by the public, the City has agreed to reimburse

Developer a portion of Developer's cost of constructing and installing the Public Amenities, subject to the terms and conditions of this Agreement.

F. City and Developer further acknowledge and agree that the development of the Property within the City is a project of such size, scope, and quality that Developer requires certain assurances from the City that Developer may complete the development of the Project in accordance with the Development Plan and this Agreement.

G. This Agreement is a development agreement within the meaning of A.R.S. §9-500.05 and shall be construed as such.

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

In addition to words and terms defined elsewhere herein, the following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1 “Certificate of Occupancy” means either (a) a certificate of occupancy (final, temporary, shell, conditional or otherwise) for any building or other improvements constructed within the Project issued by the Community Development Department and Public Works Department of the City of Tempe, or (b) a certificate of completion substantially in the form of *Exhibit 1.1* hereto (or the then-current form thereof employed by the City) issued by the City of Tempe Community Development Department certifying that a building or other improvement constructed as part of the Project or the Public Amenities has been substantially completed.

1.2 “City” means the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

1.3 “Developer” means Papago Park Center, Inc., and its permitted successors and assigns.

1.4 “Development Plan” means the Project described on *Exhibit 1.4*.

1.5 “Improvements” means all the improvements which may be constructed from time to time as part of the Public Amenities or the Project, including, without limitation, buildings, structures, utilities, driveways, parking areas, walls, landscaping and other improvements of any type or kind to be built by Developer.

1.6 “Multi-Use Path License Areas” means the pathways to be licensed by the City under the SRP License, which will be determined after the Relocation and be approximately 50 feet wide on the north side of the Grand Canal or 20 feet wide on the south side of the Grand Canal, for use as a bike and pedestrian pathway, on which the Public Amenities will be constructed.

1.7 “Project” means the mixed-use office, multi-family, retail, and hotel project described in the Development Plan, anticipated to contain approximately 3.1 million square-feet of development.

1.8 “Property” shall mean that certain real property referred to in Recital A and legally described in *Exhibit 1.8*.

1.9 “Public Amenities” means the following items having an aggregate value determined in accordance with **Section 3.5.1**, to the extent actually constructed by Developer: (i) bike and pedestrian pathways constructed to City of Tempe standards consistent with, or exceeding, existing multi-use pathways along the Crosscut Canal or Western Canal parkway (the “**Core Amenities**”), and (ii) such other improvements, enhancements and upgrades as City and Developer agree in writing shall be included within the Public Amenities (the “**Enhanced Amenities**”).

1.10 “Receipts Stream” shall have the meaning given such term in **Section 3.5.2** hereof.

1.11 “Schedule of Performance” means the Schedule of Performance attached hereto as *Exhibit 3.1*, containing milestones for development and construction of various aspects of the Public Amenities, as the same may be amended from time to time.

ARTICLE II PRELIMINARY MATTERS

2.1 Incorporation of Recitals. The Recitals are true and correct and are incorporated herein by reference.

2.2 Duration of Development Agreement. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and continue until expiration or other termination of the SRP License.

2.3 General Cooperation. City and Developer acknowledge and agree that they shall cooperate in good faith with each other and use their respective good-faith and commercially reasonable efforts to pursue development of the Property in accordance with the Development Plan and otherwise as contemplated by this Agreement, which shall include, without limitation, the Relocation and the construction and installation of the Public Amenities within the Multi-Use Path Licensed Areas. City agrees to use its reasonable best efforts to assist Developer in obtaining all approvals required by state, federal, county or other governmental authorities in order to develop the Property in accordance with the Development Plan and this

Agreement. To further the commitment of City and Developer to cooperate in the implementation of this Agreement, City shall designate and appoint a representative to act as liaison between the City and its various departments and Developer shall designate and appoint a representative to act on its behalf under this Agreement. The initial representative for the City (“**City Representative**”) shall be Alex Smith, and the initial representative for Developer (“**Developer Representative**”) shall be Mitch Rosen. Both the City Representative and the Developer Representative shall be available at reasonable times to discuss and review the performance of the City and Developer under this Agreement and the development of the Property. A party may change its Representative at any time by giving notice to the other party as provided in **Section 6.5**.

ARTICLE III DEVELOPMENT OF MULTI-USE PATH LICENSE AREAS

3.1 Schedule of Performance. City and Developer intend that the Multi-Use Path License Areas shall be developed with the Public Amenities pursuant to, and in accordance with, the Schedule of Performance attached hereto as ***Exhibit 3.1***. Developer shall use commercially reasonable efforts to ensure that the development of the Multi-Use Path License Areas occurs in accordance with the Schedule of Performance.

3.2 Compliance with Schedule of Performance; Extensions. If Developer fails to comply with the Schedule of Performance, then this Agreement shall automatically terminate, subject, however, to the provisions of **Section 3.3**. No notice of such termination shall be required, as the passage of time without completion of the appointed task cannot be cured. From time to time following the Effective Date, however, Developer and City may, by mutual written agreement, refine and revise the Development Plan and Schedule of Performance as may be necessary to accommodate any factors, events or occurrences that may necessitate such refinement or revision, and the Parties shall negotiate in good faith any such agreement. So long as Developer is not then in default under this Agreement, Developer shall have the right to extend the time for performance of the milestones listed on the Schedule of Performance as hereafter provided. Developer may extend one item (which shall operate to extend all subsequent items for the same period) listed on the Schedule of Performance once for a period of six (6) months by giving written notice to City not less than forty-five (45) days before the then scheduled performance date. Developer may extend an additional item (which shall operate to extend all subsequent items for the same period) listed on the Schedule of Performance (whether or not a prior extension has been obtained) for an additional period not to exceed six (6) months, by giving written notice to City not less than forty-five (45) days before the then-scheduled performance date, and payment to City of a nonrefundable extension fee of \$100,000, provided that Developer may elect to have the Public Amenities Cost Share reduced by \$100,000 instead of paying such nonrefundable extension fee directly to the City.

3.3 Forced Delay. The time for performance for any items on the Performance Schedule shall be extended as may be reasonably required on account of delays due to causes beyond Developer’s reasonable control, such as labor disputes, labor or material shortages, natural disasters, fires, unusually severe weather for Tempe, Arizona, or the delays of

subcontractors or materialman as the result of such matters; provided that Developer gives City written notice of the occurrence of any such event within thirty (30) days.

3.4 Completion of Public Amenities, Maintenance of Public Amenities.

3.4.1 Completion of Public Amenities. Developer shall design and construct the Core Amenities to City of Tempe standards consistent with, or exceeding, existing multi-use pathways along the Crosscut Canal and the Western Canal. Developer shall further design and construct the Enhanced Amenities as agreed to by the City and Developer. The initial list of the Core Amenities and the Enhanced Amenities, on which the parties have agreed, is attached hereto as **Exhibit 3.4.1**.

3.4.2 Maintenance of Multi-Use Path Licensed Areas. Developer shall maintain the Multi-Use Path Licensed Areas and the Public Amenities in good order and repair during the Term.

3.5 Cost Sharing for Public Amenities.

3.5.1 Public Amenities Cost. Developer agrees to install the Core Amenities and the Enhanced Amenities within the Multi-Use Path Licensed Areas. If and to the extent the amount incurred by Developer to construct the Public Amenities (the “**Public Amenities Cost**”) is at least \$3,000,000, then City agrees to share half the Public Amenities Cost (but not more than \$1,500,000) actually incurred by Developer in constructing the Public Amenities (the “**Public Amenities Cost Share**”). The Public Amenities Cost Share shall be established by Developer’s submission of an affidavit attesting to the exact amount of the Public Amenities Cost, accompanied by copies of relevant invoices, or such other information as City may reasonably require to evidence actual payment of such costs. The Public Amenities Costs shall include all costs, expenses, fees and charges incurred and paid to contractors, architects, engineers, surveyors, governmental agencies, construction managers, and other parties for materials, labor, design, engineering, surveying, site excavation and preparation, payment and performance bonds, and other costs and expenses reasonably necessary for the construction and installation of the Public Amenities.

3.5.2 Payment of Public Amenities Cost Share. City will pay the Public Amenities Cost Share from time to time, from the **Receipts Stream** (as hereafter defined). For purposes hereof, “**Receipts Stream**” means 70% of the unrestricted privilege (sales) taxes levied and collected by the City pursuant to Chapter 16 of the Tempe City Code, or any successor provision, on taxable transactions that occur within, or with respect to, the Project. As of the date hereof, City imposes a 1.2% unrestricted privilege tax and a .6% restricted privilege tax (0.5% - transit; 0.1% - arts) for a total privilege tax rate of 1.8%. Developer acknowledges that no such amounts shall be deemed to be part of the Receipts Stream until actually received by the City in connection with the filing by the applicable taxable party of the required tax return and payment for the period to which the payment relates. The Receipts Stream is restricted for the purposes of the Public Amenities Cost Share and shall be accounted for by the City separately from the tax revenues credited to the City’s general fund which are unrestricted and available for general City use.

City shall begin making payments from the Receipts Stream toward the unpaid balance of the Public Amenities Cost Share no sooner than the 90th day after the end of the first calendar quarter following the date that funds become available from the Receipts Stream. Payments shall continue within 90 days after the end of each calendar quarter thereafter during which funds from the Receipts Stream are or become available until such time as the Public Amenities Cost Share has been paid in full. No interest shall accrue on the unpaid balance of the Public Amenities Cost Share. In this respect, Developer acknowledges that payment of the Public Amenities Cost Share will be spread over a number of years, and will depend entirely on development of the Project, generation of funds constituting part of the Receipts Stream, and actual receipt of such funds by City.

Nothing in this **Section 3.5.2** shall be construed to require City to make any payment to Developer until the Receipts Stream is actually generated and received by the City. Further, in no event shall such payments exceed the Public Amenities Cost Share; if City subsequently determines that there has been an overpayment, Developer shall reimburse same to City within thirty (30) days after written request.

3.5.3 Condition Precedent. Notwithstanding anything in this **Section 3.5** to the contrary, no payment of the Public Amenities Cost Share shall be made to the Developer until SRP grants the SRP License to the City. SRP's grant of such SRP License shall be a condition precedent to the City's obligation to pay the Public Amenities Cost Share to Developer.

3.6 Public Use. The Core Amenities shall be open and available for use by the public during the Term, subject to the terms and conditions of the SRP License. Developer shall also have the right to operate and maintain the Public Amenities and may temporarily restrict access to the Public Amenities in connection with any repair, reconstruction or maintenance of the Public Amenities. The Enhanced Amenities shall be open and available for use by the public subject to reasonable rules imposed by Developer and of which appropriate notice shall be given.

3.7 Design Contribution. To increase access to the Public Amenities, create connectivity between the Project and Tempe Town Lake and otherwise enhance the use of City's existing pathways, Developer agrees to contribute twenty-five thousand dollars (\$25,000) toward expenses incurred or to be incurred by City in designing pedestrian/multimodal improvements whether or not located on the Property ("Design Contribution"). Developer shall pay the Design Contribution within thirty (30) days after City provides Developer with an invoice, cost estimate or other such documentation related to the design process for the improvements to which the Design Contribution is to be applied. City shall use the Design Contribution to pay all or any portion of the costs of the design process within sixty (90) days after Developer pays the Design Contribution to the City.

ARTICLE IV DEVELOPMENT OF PROJECT

4.1 Development Criteria.

4.1.1 Signage. One of the major components of the Project is the Relocation and adaptive reuse of the Grand Canal. City and Developer hereby acknowledge that the distinctive location of the Project, and its development to a mixed-use office, multi-family, retail, and hotel project present a unique opportunity to enhance the visibility and high-profile nature of the Project. As a result, the parties acknowledge and agree that appropriate signage will and should be an integral part of the Project and will be necessary to attract high quality employers to the Project. City and Developer will coordinate their efforts to agree on appropriate signage for the Project. City specifically agrees that Developer may erect and maintain the signage identified in the signage plan attached hereto as ***Exhibit 4.1.1***. Notwithstanding such approval, Developer shall submit all applications, plans and other information as City requires in accordance with City's normal processes, and shall pay all fees associated therewith. City and Developer agree that the signage plan attached as ***Exhibit 4.1.1*** as of the Effective Date is a summary of the signage plan, and that Developer and City will work in good faith to finalize and obtain City approval of the final signage plan. Upon City approval of the final signage plan, such signage plan shall be automatically incorporated herein as ***Exhibit 4.1.1*** without the requirement of further action, and all references in this Agreement to ***Exhibit 4.1.1*** shall mean and refer to such approved signage plan.

4.1.2 Design Guidelines. Given the nature of the history surrounding the Property and its uses, and the adaptive reuse of the Grand Canal, the Project presents a unique opportunity for water intensive landscaping that in other settings might not be appropriate, and generally to enhance the landscaping, lighting and other design elements to be incorporated into the Project. In this regard, City agrees that Developer may incorporate as part of, or install at, the Project those features described in the "**Design Guidelines**" attached hereto as ***Exhibit 4.1.2***. Notwithstanding such approval, Developer shall submit all applications, plans and other information as City requires in accordance with City's normal processes, and shall pay all fees associated therewith. City and Developer agree that (i) the Design Guidelines attached as ***Exhibit 4.1.2***, as of the Effective Date, is a summary of the Design Guidelines, and (ii) a complete copy of the Design Guidelines is held on file at the office of the Developer.

4.1.3 Art in Private Development. City and Developer hereby acknowledge that the distinctive location of the Project, and its development into a mixed-use development presents a unique opportunity to enhance the visual design elements to be incorporated into the Improvements. Developer intends that the ultimate design for the Improvements at the Project will contain singular architectural embellishments and other stylistic enhancements designed by a professional artist (the "**Embellishments**"), equivalent to built-in artwork including the central water feature, entry monumentation, and enhancements to the canal multi-use path system in the form of customized bridge improvements. City agrees that Developer will be allowed to apply expenditures related to the design and installation of the Embellishments on the Improvements or otherwise within the Project's outside locations (i.e., not within the interior of a building or other improvement) to the City's requirements for expenditures toward Art in Private Development and Art in Public Spaces (as defined in and determined in accordance with Section 4-407 of the City of Tempe Zoning and Development Code); provided that no part of the credit shall be available for design, construction or installation of standard architectural elements of any Improvements (i.e., elements which are not singular architectural embellishments or other stylistic enhancements designed by a professional artist).

ARTICLE V DEFAULT; REMEDIES and TERMINATION

5.1 Default.

5.1.1 Default; Cure Period. It shall be a default hereunder if either party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of the failure; provided that if the nature of the default is such that it cannot reasonably be cured within the thirty-day period, no default shall be deemed to exist if the defaulting party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion within 90 days.

5.1.2 Additional Developer Defaults. In addition to the foregoing, it shall be a default hereunder if: (i) any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the "Bankruptcy Code") or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against Developer or any partnership of which Developer is a partner, their respective assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing; (ii) Developer makes an assignment for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; (iii) a custodian, as defined by the Bankruptcy Code, takes charge of any property of Developer or any property of any partnership of which Developer is a partner; (iv) garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against any of the property or effects of Developer, or any partnership of which Developer is a partner, and such issuance is not discharged or bonded against within ninety (90) days; (v) the dissolution or termination of existence of Developer unless its successor by transfer or operation of law is continuing the business of operating the Project; or (vi) there is a material default or material breach of any representation, warranty or covenant, or there is a material false statement or material omission, by Developer under this Agreement or any other document forming part of the transaction in respect of which this Agreement is made.

5.2 Dispute Resolution. If the parties cannot resolve any dispute that arises out of this agreement between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and the Developer shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and Developer, or in such other fashion as the mediator may

order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation.

5.3 Developer's Remedies. If City is in default under this Agreement and the parties do not resolve the City's default pursuant to the nonbinding mediation described in **Section 5.2** Developer shall have the right to terminate this Agreement upon written notice to the City. The Developer shall have the right to pursue all other legal and equitable remedies which the Developer may have at law or in equity, including, without limitation, the right to seek specific performance and the right to self-help; provided that City shall in no event be liable for punitive, incidental or consequential damages or any monetary damages other than actual direct damages.

5.4 City's Remedies. If the Developer is in default under this Agreement and the parties do not resolve the Developer's default pursuant to the nonbinding mediation described in **Section 5.2**, then the City shall have the right to terminate this Agreement immediately upon written notice to Developer and to pursue any other rights or remedies provided hereunder, at law or in equity, provided that Developer shall in no event be liable for punitive, incidental or consequential damages or any monetary damages other than actual direct damages. After any such termination, Developer shall no longer be entitled to any benefits provided under this Agreement.

5.5 Effect of Event of Termination. Upon the termination of this Agreement as the result of the default or breach of the Developer, the Developer shall have no further rights to the City-provided development benefits pursuant to this Agreement accruing from and after the termination of this Agreement. Upon the termination of this Agreement as the result of the default or breach of the City, the City shall have no further rights to the Public Amenities, on behalf of the City or the public, accruing from and after the termination of this Agreement.

5.6 Limitation. Neither party shall be entitled to pursue an award of incidental, consequential, punitive, special, speculative or similar damages in the event of a Default by the other party, and each party hereby waives the right to pursue an award of such damages.

ARTICLE VI GENERAL PROVISIONS

6.1 No Personal Liability. No member, shareholder, director, partner, manager, officer or employee of Developer shall be personally liable to City, or any successor or assignee, (a) in the event of any default or breach by the Developer, (b) for any amount which may become due to the City or its successor or assign, or (c) pursuant to any obligation of Developer under the terms of this Agreement.

6.2 No Personal Liability. No member, official or employee of the City shall be personally liable to Developer, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Developer or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

6.3 Liability and Indemnification. Developer hereby agrees to indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense ("**Claims**") arising, directly or indirectly, in whole or in part, out of City's execution of this Agreement or the execution and performance of Developer's obligations under this Agreement, including any third party claims relating to environmental conditions on the Property, except to the extent such Claims arise, directly or indirectly, in whole or in part, from City's default under this Agreement. In the event any Claims are filed, prosecuted or threatened against City for which Developer has indemnification obligations hereunder, Developer shall have full authority to settle such Claims through the exercise of Developer's sole discretion. Additionally, if any Claims are filed, prosecuted or threatened which arise out of City's execution of this Agreement, Developer shall have the right to terminate this Agreement, provided that this **Section 6.3** shall survive such termination with respect to any occurrences which arise prior to the date of termination.

6.4 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. § 38-511.

6.5 Notice. All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, addressed as follows:

To Developer:	Development Manager Papago Park Center, Inc. 1521 North Project Drive Tempe, Arizona 85281
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With a copy to:	Manjula M. Vaz, Esq. Gammage & Burnham Two North Central 15th Floor Phoenix, Arizona 85004
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To the City:	City Manager City of Tempe 31 East Fifth Street Tempe, Arizona 85281
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With a copy to:

City Attorney
City of Tempe
21 East Sixth Street, Suite 201
Tempe, Arizona 85281

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein.

6.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

6.7 Successors and Assigns. Upon prior written notice to City, Developer may assign its interest in this Agreement, in whole or in part, to any entity that controls, is controlled by or is under common control with Developer (including but not limited to a limited liability company of which the original Developer is a member), who undertakes to proceed with development of the Project. Provided that the assignee has provided City with the name, address and designated representative of the assignee, and has assumed the rights, liabilities and obligations of Developer under this Agreement pursuant to a written instrument (a true and correct copy of which shall be provided to City), then the assignor shall be released from any obligations or liabilities arising under this Agreement from and after the date of assignment. Neither Developer nor any permitted assignee of Developer may otherwise assign its interest in this Agreement, in whole or in part, without the prior written consent of City, which consent may be reasonably withheld by City. This Agreement shall be personal to Developer and its permitted successors and assigns, and shall not run with the land.

6.8 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

6.9 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

6.10 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

6.11 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover

from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

6.12 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

6.13 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after execution of this Agreement by the City.

6.14 City Manager's Power to Consent. The City authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

6.15 Estoppel Certificate. Within 30 days after receipt of written request therefor from the other party, City or Developer, as the case may be, shall execute, acknowledge and deliver to the requesting party and/or its lender a statement certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect), and acknowledging that there are not, to the certifying party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied on by any auditor of either party, or by any prospective purchaser of the Property.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on or as of the day and year first above written.

ATTEST:

“CITY”

THE CITY OF TEMPE, an Arizona municipal corporation

Brigitta Kuiper, City Clerk

APPROVED AS TO FORM:

By _____
Mark W. Mitchell, Mayor

Judi R. Baumann, City Attorney

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) ss

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Mark W. Mitchell, the Mayor of the City of Tempe.

Notary Public

My Commission Expires:

“DEVELOPER”

PAPAGO PARK CENTER, INC., an Arizona
corporation

By: _____

Name: _____

Title: _____

STATE OF ARIZONA)

)

ss

COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of
_____, 2014 by _____, the _____ of
_____.

Notary Public

My Commission Expires:

EXHIBIT1.1
CERTIFICATE OF COMPLETION

TO WHOM IT MAY CONCERN:

In accordance with the terms of the Development Agreement dated _____, 20____, by and between the CITY OF TEMPE (CITY) and _____, this Certificate of Completion is issued for the Project or the Public Amenities on the following described parcel of land:

(LEGAL DESCRIPTION)

Construction of improvements were initiated on or about _____ and were completed on or about _____.

Respectfully,

Community Development Manager
City of Tempe, Arizona

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 20____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be _____ of the City of Tempe, an Arizona municipal corporation, and he/she, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

The site plan illustrates the layout of the University of California, Irvine campus. Buildings are labeled with letters A through O, and parking areas are labeled P1 through P8. The plan shows a central circular area with a fountain, surrounded by various buildings and parking lots. The campus is bordered by a road on the left and a road on the right. A north arrow is located in the bottom right corner.

EXHIBIT 1.8
DESCRIPTION OF THE PROPERTY

EXHIBIT "A"
DESCRIPTION OF
REAL ESTATE IN
MARICOPA COUNTY,
STATE OF ARIZONA

TRACT ONE

Lot 1 and Tract "A", Papago Park Center Phase 1, Tract D, as recorded in book 716, page 37 of Maricopa County Records, Arizona.

TRACT TWO

A Parcel of land in the South half of Section 9, Township 1 North, Range 4 East of the Gila and Salt River Meridian, Maricopa County, Arizona.

All that portion of the Grand Canal described in that certain General Warranty Deed from Salt River Project Agricultural Improvement and Power District to the United States of America dated January 27th, 2003 recorded February 3, 2003 at Document 2003-0129819, records of Maricopa County, State of Arizona containing an area of 7.02 acres more or less, and being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 9, a found 3 ¼" diameter Aluminum cap stamped "LS 15925";

Thence South 89° 11' 32" West, 2095.81 feet, along a line between said Southeast corner and the Southwest corner of said Section 9, a set 3 ¼" diameter Aluminum cap stamped "LS 15925";

Thence leaving said line, North 00° 48' 28" West, 389.72 feet, to a point of intersection of the Northerly line of the Grand Canal as recorded in said Document 20030129819, Maricopa County Records (MCR), and the Northerly Right-of-Way line of the Southern Pacific Transportation Company as recorded in Document No. 90 223304, MCR;

Thence Westerly along said Northerly line of the Southern Pacific Transportation Company, South 84° 57' 33" West, 404.84 feet, to said Southerly line of the Grand Canal;

Thence leaving said Northerly line of the Southern Pacific Transportation Company and Northwesterly along said Southerly line of the Grand Canal, North 72° 36' 39" West, 45.34 feet, to the **POINT OF BEGINNING**;

Thence continuing along said Southerly line, North 72° 36' 39" West, 2251.73 feet;

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Thence continuing along said Southerly line, North $81^{\circ} 43' 36''$ West, 237.84 feet;

Thence leaving said Southerly line, North $52^{\circ} 48' 40''$ West, 14.79 feet, to the beginning of a non-tangent curve, concave Southerly, having a radius of 2987.30 feet, the center of which bears South $09^{\circ} 31' 48''$ East;

Thence Easterly along said curve, through a central angle of $08^{\circ} 00' 50''$, an arc length of 417.83 feet, to said Northerly line of the Grand Canal;

Thence Southeasterly along said Northerly line, South $73^{\circ} 10' 09''$ East, 1873.44 feet, to the beginning of a non-tangent curve, concave Southwesterly, having a radius of 2985.05 feet, the center of which bears South $35^{\circ} 02' 49''$ West;

Thence leaving said Northerly line and Southeasterly along said curve, through a central angle of $00^{\circ} 59' 00''$, an arc length of 51.23 feet;

Thence South $38^{\circ} 19' 58''$ East, 234.67 feet, to said **POINT OF BEGINNING**;

EXCLUDING THE FOLLOWING:

A portion of land lying within Lot 1, as shown on the Final Plat of Papago Park Center Phase 1, Tract D as recorded in book 716, page 37 of Maricopa County Records, being situated within Section 9, Township 1 North, Range 4 East of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Southeast Corner of said Section 9 (Aluminum Cap), from which point the Northeast Corner of the Southeast Quarter of the Southeast Quarter (brass cap flush) of said Section 9 bears N $01^{\circ} 18' 36''$ W, 1327.09 feet;

Thence along the east line of the southeast quarter of said Section 9, N $01^{\circ} 18' 36''$ W, 501.49 feet;

Thence leaving said east line, S $88^{\circ} 41' 24''$ W, 2377.92 feet, to the southeast corner of said Lot 1, said point being the **POINT OF BEGINNING**;

Thence along the south line of said Lot 1, N $73^{\circ} 10' 29''$ W, 363.46 feet to a non-tangent curve, concave to the southwest, having a radius of 2985.05 feet, the center of which bears S $35^{\circ} 01' 47''$ W;

Thence northwesterly along said curve, through a central angle of $15^{\circ} 52' 13''$, an arc length of 826.82 feet to a non-tangent curve, concave to the north, having a radius of 185.99 feet, the center of which bears N $38^{\circ} 14' 27''$ W;

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Thence northwesterly along said curve, through a central angle of $109^{\circ}48'17''$, an arc length of 356.45 feet to a non-tangent curve, concave to the south, having a radius of 2987.30 feet, the center of which bears $S\ 13^{\circ}19'03''\ W$;

Thence northwesterly along said curve, through a central angle of $14^{\circ}49'38''$, an arc length of 773.07 feet to the south line of said Lot 1, a point of non-tangency;

Thence along said south line $N\ 73^{\circ}10'29''\ W$, 207.86 feet;

Thence continuing along said south line $N\ 82^{\circ}41'29''\ W$, 328.72 feet to the southwest corner of said Lot 1, a point on a non-tangent curve, concave to the east, having a radius of 829.23 feet, the center of which bears $S\ 67^{\circ}27'30''\ E$;

Thence along the west line of said Lot 1, northeasterly along said curve, through a central angle of $04^{\circ}01'36''$, an arc length of 58.28 feet to a point of non-tangency;

Thence leaving said west line $S\ 63^{\circ}31'06''\ E$, 151.98 feet to a non-tangent curve, concave to the south, having a radius of 3105.30 feet, the center of which bears $S\ 08^{\circ}12'38''\ E$;

Thence easterly along said curve, through a central angle of $21^{\circ}55'11''$, an arc length of 1187.99 feet to a non-tangent curve, concave to the south, having a radius of 190.74 feet, the center of which bears $S\ 29^{\circ}47'05''\ E$;

Thence southeasterly along said curve, through a central angle of $93^{\circ}01'42''$, an arc length of 309.69 feet to a non-tangent curve, concave to the south, having a radius of 3103.05 feet, the center of which bears $S\ 18^{\circ}49'09''\ W$;

Thence southeasterly along said curve, through a central angle of $20^{\circ}41'54''$, an arc length of 1120.99 feet to a point of non-tangency;

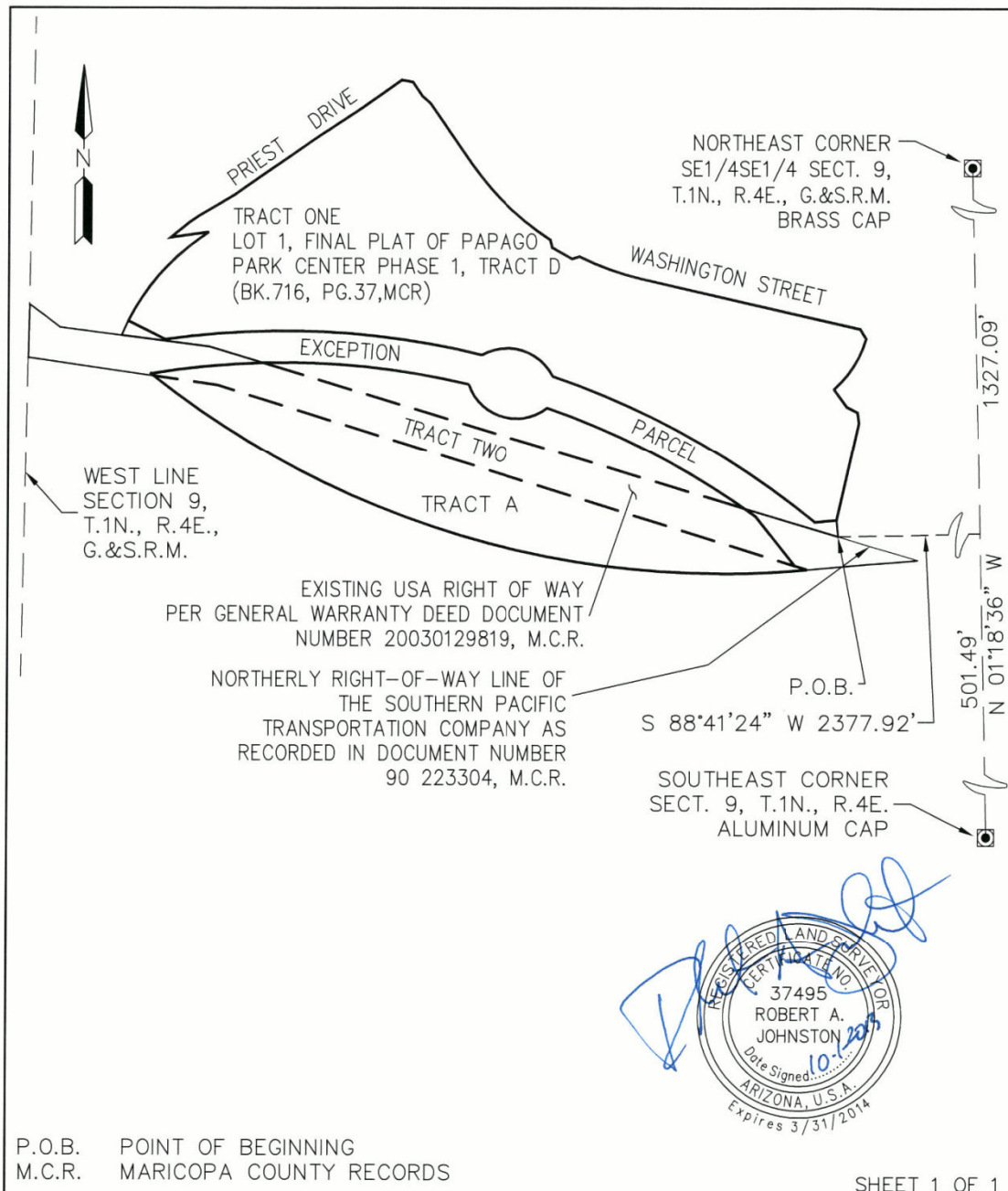
Thence $N\ 84^{\circ}57'13''\ E$, 81.66 feet to the east line of said Lot 1;

Thence along said east line $S\ 05^{\circ}02'31''\ E$, 62.08 feet to the **POINT OF BEGINNING**.

Prepared by: HilgartWilson
1661 E. Camelback Road, Suite 275
Phoenix, AZ 85016
Project No. 1219.0104
Date: October 1, 2013



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PROJ.#:	1219	PAPAGO PARK CENTER WASHINGTON ST. & PRIEST DR. PHOENIX, ARIZONA	hilgartwilson ENGINEERS • PLANNERS • SURVEYORS 1661 E. CAMELBACK RD., STE. 275 PHOENIX, AZ 85016 PH 602.490.0535 FAX 602.325.0161
DATE:	8-26-2013		
SCALE:	1"=500'		
DRAWN BY:	RAJ		
CHECKED BY:	RAJ	EXHIBIT A	

EXHIBIT 3.1
SCHEDULE OF PERFORMANCE

Time for Performance	Performance Required
Effective Date plus 18 months	The Relocation will have been completed based on the approximate location shown on the PAD for the Property, as approved by the Tempe City Council, on February 7, 2013.
Effective Date plus 36 months	Commence construction of the Core Amenities
Effective Date plus 60 months	Certificate of Occupancy for Core Amenities
Effective Date plus 96 months	Certificate of Occupancy issued for Public Amenities which, in the aggregate, cause the Public Amenities Cost to equal or exceed 3 Million Dollars.

The times for the performance of the items on the foregoing Performance Schedule shall be subject to the following conditions and limitations:

The time for the performance of all of the Items of the Performance Schedule shall be extended as may be reasonably required on account of strikes, labor or material shortages, natural disasters, acts of war or terrorism, acts of god, or other events beyond the reasonable control of Developer, provided that Developer gives written notice of the occurrence of any such event within thirty (30) days.

The time for the performance of any of the Items of the Performance Schedule will be deemed to expire at 5:00 p.m. (Phoenix time) on the last day of the applicable time period. If the time for the performance of any of the Items of the Performance Schedule expire on a Saturday, Sunday, or legal holiday, the time for performance or taking such action will be extended to the next succeeding day that is not a Saturday, Sunday, or legal holiday and during which the City is open for business.

EXHIBIT 3.4.1
CORE AMENITIES AND THE ENHANCED AMENITIES

The Core Amenities and the Enhanced Amenities initially consist of a central water feature and multi-use path improvements along the north and south side of the Grand Canal within The Grand at Papago Park Center.

The improvements along the canal include a continuous seat wall “cap” at the canal edge, pathways on each side of the canal designed to offer options to canal users with the north improvements designed to meet the shared-use trail criteria, including a paved surface running adjacent to a 6-foot-wide soft surface with shade trees on its south side, and small gathering/seating areas. The recreational path on the south side of the canal runs adjacent to the canal and is compacted decomposed granite. Plantings on each side of the canal focus on trees to provide shade and pedestrian scale along its walkways.

A large oval water feature at the core of the Property is the primary landscape focal point. The water feature has been designed to evoke the qualities and character of the original Roosevelt Dam structure. Large retaining walls create small gathering areas from which the water feature can be experienced at several different vantage points.

In addition to the above described amenities, the multi-use path improvements will include embellished bridge structures, a water gate to maintain water height, directional signage, lighting, seating areas, and irrigation systems.

EXHIBIT 4.1.1
SIGNAGE PLAN

The approved signage plan is on file with the City of Tempe Planning Department.

SIGNAGE PLAN - SUMMARY

Comprehensive Sign Plan

I. General Information

- A. Project Introduction
- B. Project Narrative
- C. Vicinity Map
- D. Master Site Plan
- E. Project Data

II. Project Identification and Logo Graphic

- A. Introduction
- B. Logo Design
- C. Design Standards

III. District Theme

- A. Introduction
- B. District Names and Themes
- C. District Mapping

IV. Comprehensive Signage Package

- A. Introduction
- B. Design Intent
- C. Colors and Materials
- D. Sign Type Summary
- E. Sign Type Matrix
- F. Sign Location Plan - Main Monumentation
- G. Site ID Signage Details
- H. Multiple Tenant ID Signage Details
- I. Sign Location Plan - Directory and Directional
- J. Directory and District Sign Details
- K. Directional Details
- L. Sign Location Plan - Tenant ID & Miscellaneous Signage
- M. Garage ID Signage Details
- N. Tenant ID Signage Details
- O. Hotel and Residential Signage Details
- P. Regulatory Sign Details
- Q. Themed Interpretive Details
- R. Attached Wall Sign Standards
- S. Building Elevations
- T. Wall Sign Criteria and Details
- U. Storefront Signage

V. Tenant Sign Criteria

- A. Design Requirements

VI. Terms and Definitions

EXHIBIT 4.1.2
DESIGN GUIDELINES

The approved Design Guidelines are on file at the office of the Developer.

DESIGN GUIDELINES SUMMARY

MASTER DEVELOPER

Papago Park Center, Inc.
1521 North Project Drive
Tempe, AZ 85281
(480) 236-3647

**ARCHITECTS AND
PLANNERS**

Kendle Design Collaborative
6115 North Cattletrack
Scottsdale, Arizona 85250
(480) 951-8558
Suite 6 Architecture+Planning, Inc
6111 N. Cattletrack Rd.
Scottsdale, Arizona 85250
(480) 348-7800

LANDSCAPE ARCHITECT

GBtwo Landscape Architecture,
Inc.
6115 North Cattletrack
Scottsdale, Arizona 85250
(480) 991-3384

**ENVIRONMENTAL
GRAPHICS**

Thinking Caps
1425 N 1st Street Suite 101
Phoenix, AZ 85004
(602) 495-1260

CIVIL ENGINEER

AMEC Environment &
Infrastructure, Inc.
4600 E Washington Street, Suite
600
Phoenix, AZ 85034
(602) 733-6000

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